City of Lafayette Staff Report

To:	City Council
Meeting Date:	June 23, 2008
From:	Glenda Warmoth, Assistant Planner
Date Written:	June 13, 2008
Subject:	Agreement relating for installation and maintenance of existing and new landscaping between property owner, Bruce Whitten and the City of Lafayette, for property located at 13 Sessions Road APN 232-040-023

Introduction

The attached agreement relating to the installation and maintenance of existing and new landscaping between Bruce Whitten and the City of Lafayette was one of the conditions of approval for design review application RZ02-94CC & MS502-94CC. The attached agreement meets the requirements for approval.

Recommendation

Accept agreement relating to installation and maintenance of existing and new landscaping and authorize the City Clerk to record.

11F

Record at the request of City of Lafayette
Return to:
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Bruce Whitten hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 13 Sessions Road, (Assessor's Parcel Number 232-040-023) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On March 20, 2008, the City granted a Hillside Development Permit to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Hillside Development Permit, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on March 20, 2008, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Planning Commission proceedings conducted by the City (Planning File No. RZ02-94CC & MS502-94CC) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the #12 condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Bruce Whitten
13 Sessions Road
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Planning Commission proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

Bruce R Whitten

Bruce Whitten, Property Owner

Bruce Whitten

Property Owner, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

ACKNOWLEDGMENT

State of California
County of Contra Costa)

On May 15, 2008 before me, Diane Repulles, Notary Public
(insert name and title of the officer)

personally appeared Bruce Whitten,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Diane Repulles (Seal)

DIANE REPULLES
Commission # 1562846
Notary Public - California
Contra Costa County
My Comm. Expires Apr 1, 2009

Order No. 611-5705

EXHIBIT "A"
LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF LAFAYETTE, AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL "D", AS SHOWN ON THE MAP OF SUBDIVISION M.S. 502-94, FILED MARCH 4, 1998 IN BOOK 173 OF PARCEL MAPS, PAGE 32, CONTRA COSTA COUNTY RECORDS.

RESERVING FROM PARCEL ONE:

AN EASEMENT, NOT TO BE EXCLUSIVE, TO BE APPURTENANT TO AND FOR THE BENEFIT AND USE OF PARCELS "A", "B" AND "C", AS SHOWN ON SAID PARCEL MAP (173 PM 32) AND ANY SUBSEQUENT SUBDIVISION OR SUBDIVISIONS THEREOF, FOR THE PURPOSES OF ACCESS, PARKING, RECREATION, INGRESS AND EGRESS, UTILITIES AND SANITARY SEWERS, AND FOR USE FOR STORM, FLOOD AND SURFACE WATER DRAINAGE, INCLUDING ACCESS FOR CONSTRUCTION AND MAINTENANCE OF WORKS, IMPROVEMENTS AND STRUCTURES, WHETHER COVERED OR OPEN, OR THE CLEARING OF OBSTRUCTIONS AND VEGETATION, AND FOR INCIDENTAL PURPOSES, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF SAID PARCEL "D" (173 PM 32) DESIGNATED "P.A.U.E." (OR "SESSIONS ROAD") OR SAID PARCEL MAP (173 PM 32).

PARCEL TWO:

AN EASEMENT, NOT TO BE EXCLUSIVE, TO BE APPURTENANT TO AND FOR THE BENEFIT AND USE OF PARCEL ONE ABOVE AND ANY SUBSEQUENT SUBDIVISION OR SUBDIVISIONS THEREOF, FOR THE PURPOSES OF ACCESS, PARKING, RECREATION, INGRESS AND EGRESS, UTILITIES AND SANITARY SEWERS, AND FOR USE FOR STORM, FLOOD AND SURFACE WATER DRAINAGE, INCLUDING ACCESS FOR CONSTRUCTION AND MAINTENANCE OF WORKS, IMPROVEMENTS AND STRUCTURES, WHETHER COVERED OR OPEN, OR THE CLEARING OF OBSTRUCTIONS AND VEGETATION, AND FOR INCIDENTAL PURPOSES, OVER, UNDER, ACROSS AND THROUGH THOSE PORTIONS OF PARCELS "A", "B" AND "C", AS SHOWN ON THE MAP OF SUBDIVISION M.S. 502-94, FILED MARCH 4, 1998, BOOK 173 OF PARCEL MAPS, PAGE 32, CONTRA COSTA COUNTY RECORDS, DESIGNATED "P.A.U.E." (OR "SESSIONS ROAD") ON SAID PARCEL MAP (173 PM 32).

PARCEL THREE:

AN EASEMENT, NOT TO BE EXCLUSIVE, TO BE APPURTENANT TO AND FOR THE BENEFIT AND USE OF PARCEL ONE ABOVE AND ANY SUBSEQUENT SUBDIVISION OR SUBDIVISIONS THEREOF, FOR THE PURPOSE OF A PRIVATE SEWER LATERAL, AND INCIDENTAL PURPOSES, OVER, UNDER, ACROSS AND THROUGH THAT PORTION OF PARCEL "C", AS SHOWN ON THE MAP OF SUBDIVISION M.S. 502-94, FILED MARCH 4, 1998, BOOK 173 OF PARCEL MAPS, PAGE 32, CONTRA COSTA COUNTY RECORDS, DESIGNATED "10 P.S.S.E. FOR PCL. D" ON SAID PARCEL MAP (173 PM 32).

PARCEL FOUR:

EXHIBIT "A"
LEGAL DESCRIPTION continued

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS CREATED AS AN APPURTENANCE TO THE PARCEL OF LAND DESCRIBED AS PARCEL ONE ABOVE IN THE DEED FROM EDSON O. SESSIONS, ET AL, RECORDED JANUARY 31, 1967, BOOK 5296, OFFICIAL RECORDS, PAGE 435, OVER THE 50 FEET IN WIDTH STRIP OF LAND KNOWN AS SESSIONS ROAD, DESCRIBED AS FOLLOWS:

THAT PARCEL OF LAND IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, BEING A STRIP OF LAND, 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHEAST LINE OF LOT 66, AS SHOWN ON THE MAP OF TRACT NO. 533-2, LA CANYADA PARK UNIT NO. 2, FILED MARCH 12, 1954, MAP BOOK 53, PAGE 12, CONTRA COSTA COUNTY RECORDS, DISTANT THEREON NORTH 59 DEGREES 23' 18" WEST, 28.30 FEET FROM THE NORTHEAST CORNER THEREOF; THENCE FROM SAID POINT OF BEGINNING NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 520 FEET, THE CENTER OF WHICH BEARS NORTH 49 DEGREES 28' 27" WEST, AN ARC DISTANCE OF 98.56 FEET; THENCE NORTH 29 DEGREES 40' EAST, TANGENT TO THE LAST CURVE, 146 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 550 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 71.20 FEET; THENCE NORTHEASTERLY AND NORTHWESTERLY ALONG THE ARC OF A REVERSE CURVE TO THE LEFT WITH A RADIUS OF 75 FEET, THE CENTER OF WHICH BEARS NORTH 52 DEGREES 55' WEST, AN ARC DISTANCE OF 115.15 FEET; THENCE NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY ALONG THE ARC OF A REVERSE CURVE TO THE RIGHT WITH A RADIUS OF 80 FEET, THE CENTER OF WHICH BEARS NORTH 39 DEGREES 06' 48" EAST, AN ARC DISTANCE OF 207.65 FEET; THENCE SOUTH 82 DEGREES 10' EAST, TANGENT TO THE LAST CURVE, 163.26 FEET; THENCE NORTHEASTERLY, NORTHERLY AND NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 75 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 203.33 FEET; THENCE NORTH 57 DEGREES 30' WEST, TANGENT TO THE LAST CURVE, 40 FEET; THENCE NORTHWESTERLY AND NORTHERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 85 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 129.07 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A COMPOUND CURVE TO THE RIGHT WITH A RADIUS OF 350 FEET, THE CENTER OF WHICH BEARS SOUTH 60 DEGREES 30' EAST, AN ARC DISTANCE OF 118.10 FEET; THENCE NORTH 48 DEGREES 50' EAST, TANGENT TO THE LAST CURVE, 357.98 FEET; THENCE NORTH 83 DEGREES 30' WEST, 71.88 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 85 FEET, TANGENT TO THE LAST COURSE, AN ARC DISTANCE OF 49.95 FEET; THENCE NORTH 49 DEGREES 50' WEST, TANGENT TO THE LAST CURVE, 44 FEET.

EXCEPTING FROM PARCEL FOUR: THOSE PORTIONS THEREOF LYING WITHIN THE LINES OF PARCELS ONE AND TWO ABOVE DESCRIBED.

PARCEL FIVE:

"AN EASEMENT FOR ROAD AND PUBLIC UTILITY PURPOSES" CREATED IN REFERENCE TO THE PREMISES IN THE DEED TO DANA MURDOCK, ET UX, RECORDED APRIL 18, 1962, IN BOOK 4100 OF OFFICIAL RECORDS, PAGE 479, "OVER, UNDER, AND ALONG THE STRIP OF LAND OF A UNIFORM WIDTH OF 25.00 FEET LYING CONTIGUOUS TO AND NORTHERLY OF THAT PORTION OF THE BOUNDARY LINE OF PARCEL ONE" DESCRIBED IN SAID DEED (4100 OR 479) LYING BETWEEN "POINT C" AND "POINT D" REFERRED TO THEREIN.

EXHIBIT "A"
LEGAL DESCRIPTION continued

PARCEL SIX:

RIGHT OF WAY CREATED IN REFERENCE TO PARCEL ONE ABOVE IN THE DEED FROM PETAR JAKOVINA, RECORDED MARCH 10, 1998, SERIES NO. 98-049049, OFFICIAL RECORDS, AS FOLLOWS:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND UTILITIES, AND INCIDENTS THERETO, OVER, UNDER, ALONG AND THROUGH LOT 66, AS SHOWN ON THE MAP OF TRACT NO. 533-2, FILED MARCH 12, 1954, MAP BOOK 53, PAGE 12, CONTRA COSTA COUNTY RECORDS, FOR THE BENEFIT OF PARCEL ONE ABOVE.

EXCEPTING FROM PARCEL SIX: THAT PORTION OF SAID LOT 66 (53 M 12) CONVEYED TO C.V. RAMAMOORTHY, ET UX, BY DEED RECORDED MARCH 4, 1987, BOOK 13486, PAGE 46, OFFICIAL RECORDS.

A.P.N. 232-040-023